SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968

No. [redacted] 89

WILLIAM L. STEADHAM, PERCY V. JOHNSON, G. GAMBLE, JOHN HENRY HITE, LINCOLN JASPER BYRD, SARA W. BYERS, H. W. THOMPSON, J. E. HAWKINS, H. C. CLARK, PERCY V. JOHNSON and R. L. BAILEY,
Petitioners,

v.

THE STATE OF GEORGIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the State of Georgia.

G. HUGHEL HARRISON,
P. O. Box 88,
Lawrenceville, Georgia 30245,
Attorney for Petitioners.

ST. LOUIS LAW PRINTING CO., INC., 411-15 N. Eighth St., 63101. CEntral 1-4477.

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THE STATE OF GEORGIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the State of Georgia.

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of The State of Georgia entered on the 18th day of January, 1968, and in which a timely motion for rehearing was filed by Petitioners and in which a rehearing was denied by the Supreme Court of Georgia on February 12, 1968.

CITATIONS OF OPINIONS BELOW.

The opinion of the Supreme Court of Georgia is identified as Case No. 24455 and is reported in 224 Georgia 78 (... S. E. ...). The Opinion of the Supreme Court of Georgia is printed as Appendix A hereto, infra, p. 9.

JURISDICTION.

The judgment of the Supreme Court of Georgia in the original decision was decided on January 18, 1968, and rehearing was denied on February 12, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED.

The questions presented are:

1) Whether the Carroll County Board of Education is illegally constituted because the grand jury lists from which the grand jury was drawn that elected the members of the Board of Education of Carroll County were chosen only from the tax digests of Carroll County, Georgia, and not from the voters lists of Carroll County, Georgia?;

2) Can the legality of election of members of the Board of Education be attached in a bond validation proceeding?;

3) Whether the constitutional guarantee that the right of trial by jury remain inviolate requires a jury trial in a bond validation proceeding?;

4) Whether petitioners, residents of Carroll County, Georgia, are denied due process of law and equal protection of law where the bond validation proceeding is required to be held in Fulton County, Georgia.

STATUTES INVOLVED.

The statutory provisions involved are:

1) Ga. Const., Art. VI, Section XVI, Paragraph 1 (Ga. Code Ann. 2-5101).

2) Ga. Const., Art VI, Section XIV, Paragraph VI (Ga. Code 2-4906).

3) Ga. Code Ann., § 32-1423a—Appendix B.

4) Ga. Code 32-1402a—Appendix C.

5) Ga. Code Ann., § 87-818—Appendix D.

6) Ga. Code, § 59-106—Appendix E.

7) Due Process and Equal Protection Clause of the Constitution of the United States.

STATEMENT.

The State of Georgia, acting through Lewis R. Slaton, Solicitor General, instituted in the Superior Court of Fulton County, Georgia, a bond validation proceeding under the provisions of Ga. Laws 1951, pp. 251, 258, as amended by Ga. Laws 1967, pp. 871-874 (Ga. Code Ann., § 32-1423a). The defendants therein were the Georgia Education Authority (Schools) and the members thereof, the State Board of Education and the members thereof, and the five members of the Carroll County Board of Education.

Petitioners herein, two of whom are members of the Carroll County Board of Education, filed an intervention in which numerous constitutional attacks were made on the right and authority to validate the bonds and raised the questions, among others, presented for review by this Court.

The need for the validation procedure arose from actions by the Carroll County Board of Education in

adopting the necessary resolutions to obtain financing of construction of school facilities by the Georgia Education Authority (Schools). This was accomplished by agreements between the Carroll County Board of Education and the State Board of Education, and in turn, agreements between the entities as provided by statute.

From the decision validating the bonds in Fulton Superior Court, Petitioners appealed to the Supreme Court of Georgia enumerating as error:

1) The overruling of the demand for jury trial;

2) In ruling that the Superior Court of Fulton County had jurisdiction;

3) In denying the prayers of intervenors;

4) In upholding the lease agreement between the Carroll County Board of Education and the Georgia Education Authority (Schools);

5) In refusing to declare the Carroll County Board of Education to be illegally constituted as having been elected by members of the Grand Jury taken solely from the tax digest, rather than the voters list;

6) In upholding the advertisement of the bond validation proceedings.

The Federal Constitutional issues was clearly presented in the trial Court and presented to the Supreme Court of Georgia and were presented and preserved in every stage of the litigation.

Rehearing was denied by the Supreme Court of Georgia on February 12, 1968, and Petitioners now seek the writ of certiorari to review the decisions of the Supreme Court of Georgia.

REASONS FOR GRANTING THE WRIT.

The decision of the Supreme Court of Georgia upheld and validated school bonds that, in effect, created a debt upon the citizens and taxpayers of Carroll County, Georgia directly resulting from a bare majority (three of five) of the members of the board.

On its face it appears that the acts of the bare majority of the members of the school board is in compliance with the laws of Georgia. However, a closer examination shows that the school board itself is not duly constituted.

By an Act approved March 30, 1967 (Ga. Laws 1967, p. 251) that became effective immediately upon approval by the Governor, the method of choosing grand jurors was changed. This change was to obtain the names of grand jurors from the voters list rather than the tax digest.

The composition of grand jury lists has been before this Court on many occasions. **Williams v. Georgia,** 349 U. S. 375, 99 L. Ed. 1161, 1170, 75 S. Ct. 814 (1955). **Avery v. Georgia,** 345 U. S. 559, 97 L. Ed. 1244, 73 S. Ct. 891 (1953). **Whitus and Davis v. Georgia,** 385 U. S. 545, 17 L. Ed. 2d 599, 87 S. Ct. 643.

The use of tax digests containing racial designations as the source for names of grand jurors provided the opportunity for discrimination rendering acts of the members of the school board void for lack of a duly constituted Board. A grand jury that could not legally indict cannot have authority to elect a school board member.

Here, taxpayers of Carroll County, Georgia, were required to leave their County of residence and contest the validity of the creation of a debt upon themselves outside their county and were denied the right to trial by jury upon the issues raised in their intervention. Notwithstand-

ing the constitutional guarantees as to trial by jury and the right to a trial in the county of his residence, these taxpayers were required to leave their county to defend and protect their property by resisting a bond validation proceeding in Fulton County, Georgia.

The Supreme Court of Georgia held that the legality of the election of the members of the Board of Education of Carroll County could not be raised in the bond validation proceeding in that such an attack was a collateral attack. Suffice it to say that a citizen and taxpayer should be authorized to raise any issue that directly or indirectly affects the rights of the citizen.

The questions presented by this petition are not only important to these Petitioners but are important to every person asserting a right as a citizen. The questions presented are important in ascertaining and determining whether or not the grand jury that elects members of a County Board of Education is required to comply with the "one man-one vote" requirement and whether or not the members of the appointing grand jury are constituted legally where the state has recognized basic and fundamental discrepancies and allowed the members of the appointing body to be selected from tax digest that afford a basis for racial discrimination. This becomes even more apparent when the state has recognized and changed the source by requiring that they come from the list of registered voters.

The remaining questions are basic and affect the rights of Petitioners and every other citizen and the questions presented should be put at rest and decided on the merits of this record so as to afford guidance in the future.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

This 9th day of May, 1968.

Respectfully submitted,

G. HUGHEL HARRISON,
P. O. Box 88,
Lawrenceville, Georgia 30245,
Attorney for Petitioners.